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gain net income for taxable years beginning after December 31, 1976) of \$8,500 (\$16,000 less \$7,500) is the excess of the net long-term capital gain of \$10,000 (\$15,000 less \$5,000) over the net short-term capital loss of \$1,500 (\$2,500 less \$1,000). The deduction under section 1202 is \$4,250 (\$8,500×50%), all of which is attributable to the set-aside for charitable purposes. Accordingly, for 1972 the deduction allowable to the trust under section 642(c)(2) is \$74,250 [\$78,500 (set-aside for M) less \$4,250 (proper adjustment for section 1202 deduction)].

Example 4. During the taxable year a pooled income fund, as defined in § 1.642(c)-5, has in addition to ordinary income long-term capital gains of \$150,000, short-term capital gains of \$15,000, long-term capital losses of \$100,000, and short-term capital losses of \$10,000. Under the Declaration of Trust and pursuant to State law net long-term capital gain is allocable to corpus and net short-term capital gain is to be distributed to the income beneficiaries of the fund. All the capital gains and losses are attributable to amounts transferred to the fund after July 31, 1969. In view of the distribution of the net short-term capital gain of \$5,000 (\$15,000 less \$10,000) to the income beneficiaries, the deduction allowed to the fund under section 1202 is limited by such section to \$25,000 [(\$150,000 (long-term capital gains) less \$100,000 (long-term capital losses))×50%]. Since the whole of this deduction under section 1202 is attributable to the set-aside for charitable purposes, the deduction of \$50,000 (\$150,000 less \$100,000) otherwise allowable under section 642(c)(3) is subject to appropriate adjustment under section 642(c)(4) for the deduction allowable under section 1202. Accordingly, the amount of the set-aside deduction is \$25,000 [\$50,000 (set-aside for public charity) less \$25,000 (proper adjustment for section 1202 deduction)].

Example 5. The facts are the same as in example 4 except that under the Declaration of Trust and pursuant to State law all the net capital gain (capital gain net income for taxable years beginning after December 31, 1976) for the taxable year is allocable to corpus of the fund. The fund would thus include in gross income total capital gains of \$165,000 (\$150,000+\$15,000). In determining taxable income for the taxable year the capital losses of \$110,000 (\$100,000+\$10,000) are allowable in full under section 1211(b)(1). The net capital gain of \$55,000 (\$165,000 less \$110,000) is available for the set-aside for charitable purposes under section 642(c)(3) only in the amount of the net long-term capital gain of \$50,000 (\$150,000 long-term gains less \$100,000 long-term losses). The deduction under section 1202 is \$25,000 (\$50,000×50%), all of which is attributable to the set-aside for charitable purposes. Accordingly, the deduction allowable to the fund under section 642(c)(3) is \$25,000 [\$50,000 (set-aside for public charity) less

\$25,000 (proper adjustment for section 1202 deduction)]. The \$5,000 balance of net capital gain (capital gain net income for taxable years beginning after December 31, 1976) is taken into account in determining taxable income of the pooled income fund for the taxable year.

(d) *Disallowance of deduction for amounts allocable to unrelated business income.* In the case of a trust, the deduction otherwise allowable under § 1.642(c)-1 or § 1.642(c)-2 is disallowed to the extent of amounts allocable to the trust's unrelated business income. See section 681(a) and the regulations thereunder.

(e) *Disallowance of deduction in certain cases.* For disallowance of certain deductions otherwise allowable under section 642(c) (1), (2), or (3), see sections 508(d) and 4948(c)(4).

(f) *Information returns.* For rules applicable to the annual information return that must be filed by trusts claiming a deduction under section 642(c) for the taxable year, see section 6034 and the regulations thereunder.

[T.D. 7357, 40 FR 23741, June 2, 1975; 40 FR 24361, June 6, 1975, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

§ 1.642(c)-4 Nonexempt private foundations.

In the case of a trust which is, or is treated under section 4947(a)(1) as though it were, a private foundation (as defined in section 509(a) and the regulations thereunder) that is not exempt from taxation under section 501(a) for the taxable year, a deduction for amounts paid or permanently set aside, or used for a purpose specified in section 642(c) (1), or (2) shall not be allowed under § 1.642(c)-1 or § 1.642(c)-2, but such trust shall, subject to the provisions applicable to individuals, be allowed a deduction under section 170 for charitable contributions paid during the taxable year. Section 642(c)(6) and this section do not apply to a trust described in section 4947(a)(1) unless such trust fails to meet the requirements of section 508(e). However, if on October 9, 1969, or at any time thereafter, a trust is recognized as being exempt from taxation under section 501(a) as an organization described in section 501(c)(3), if at such time such trust is a private

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foundation, and if at any time thereafter such trust is determined not to be exempt from taxation under section 501(a) as an organization described in section 501(c)(3), section 642(c)(6) and this section will apply to such trust. See § 1.509 (b)-1 (b).

[T.D. 7357, 40 FR 23742, June 2, 1975; 40 FR 24362, June 6, 1975]

§ 1.642(c)-5 Definition of pooled income fund.

(a) *In general*—(1) *Application of provisions.* Section 642(c)(5) prescribes certain rules for the valuation of contributions involving transfers to certain funds described in that section as pooled income funds. This section sets forth the requirements for qualifying as a pooled income fund and provides for the manner of allocating the income of the fund to the beneficiaries. Section 1.642(c)-6 provides for the valuation of a remainder interest in property transferred to a pooled income fund. Section 1.642(c)-7 provides transitional rules under which certain funds may be amended so as to qualify as pooled income funds in respect to transfers of property occurring after July 31, 1969.

(2) *Tax status of fund and its beneficiaries.* Notwithstanding any other provision of this chapter, a fund which meets the requirements of a pooled income fund, as defined in section 642(c)(5) and paragraph (b) of this section, shall not be treated as an association within the meaning of section 7701(a)(3). Such a fund, which need not be a trust under local law, and its beneficiaries shall be taxable under part I, subchapter J, chapter 1 of the Code, but the provisions of subpart E (relating to grantors and others treated as substantial owners) of such part shall not apply to such fund.

(3) *Recognition of gain or loss on transfer to fund.* No gain or loss shall be recognized to the donor on the transfer of property to a pooled income fund. In such case, the fund's basis and holding period with respect to property transferred to the fund by a donor shall be determined as provided in sections 1015(b) and 1223(2). If, however, a donor transfers property to a pooled income fund and, in addition to creating or retaining a life income interest therein,

receives property from the fund, or transfers property to the fund which is subject to an indebtedness, this subparagraph shall not apply to the gain realized by reason of (i) the receipt of such property or (ii) the amount of such indebtedness, whether or not assumed by the pooled income fund, which is required to be treated as an amount realized on the transfer. For applicability of the bargain sale rules, see section 1011(b) and the regulations thereunder.

(4) *Charitable contributions deduction.* A charitable contributions deduction for the value of the remainder interest, as determined under § 1.642(c)-6, may be allowed under section 170, 2055, 2106, or 2522, where there is a transfer of property to a pooled income fund. For a special rule relating to the reduction of the amount of a charitable contribution of certain ordinary income property or capital gain property, see section 170(e)(1) (A) or (B)(i) and the regulations thereunder.

(5) *Definitions.* For purposes of this section, §§ 1.642(c)-6 and 1.642(c)-7:

(i) The term *income* has the same meaning as it does under section 643(b) and the regulations thereunder.

(ii) The term *donor* includes a decedent who makes a testamentary transfer of property to a pooled income fund.

(iii) The term *governing instrument* means either the governing plan under which the pooled income fund is established and administered or the instrument of transfer, as the context requires.

(iv) The term *public charity* means an organization described in clause (i) to (vi) of section 170(b)(1)(A). If an organization is described in clause (i) to (vi) of section 170(b)(1)(A) and is also described in clause (viii) of such section, it shall be treated as a public charity.

(v) The term *fair market value*, when used with respect to property, means its value in excess of the indebtedness or charges against such property.

(vi) The term *determination date* means each day within the taxable year of a pooled income fund on which a valuation is made of the property in the fund. The property in the fund shall be valued on the first day of the taxable year of the fund and on at least 3 other days within the taxable year.